

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ERIC R. SILSBY,

Plaintiff,

v.

OWNIT MORTGAGE SOLUTIONS, INC.;  
et al.,

Defendants.

3:11-CV-0476-LRH-VPC

ORDER

Before the court is plaintiff Eric R. Silsby's ("Silsby") motion for reconsideration of the court's order granting defendants' motions to dismiss (Doc. #19<sup>1</sup>). Doc. #21. Defendants filed an opposition (Doc. #22) to which Silsby replied (Doc. #24).

**I. Facts and Procedural History**

On March 28, 2006, Silsby purchased real property through a mortgage note and deed of trust executed by defendant Ownit Mortgage Solutions, Inc. ("Ownit"). Silsby defaulted on the loan and defendants initiated non-judicial foreclosure proceedings.

Subsequently, on May 18, 2011, Silsby filed a complaint against defendants alleging nine causes of action: (1) debt collection violations; (2) Nevada Unfair and Deceptive Trade Practices Act, NRS 598.0923; (3) Nevada Unfair Lending Practices Act, NRS 598D.100; (4) breach of the

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<sup>1</sup> Refers to the court's docketing number.

1 covenant of good faith and fair dealing; (5) NRS 107.080; (6) quiet title; (7) fraud; (8) slander of  
 2 title; and (9) abuse of process. Doc. #1, Exhibit 2. In response, defendants filed a series of motions  
 3 to dismiss (Doc. ##5, 7) which were granted by the court (Doc. #19). Thereafter, Silsby filed the  
 4 present motion for reconsideration. Doc. #21.

## 5 **II. Discussion**

6 Silsby brings his motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). A motion  
 7 under Rule 59(e) is an “extraordinary remedy, to be used sparingly in the interests of finality and  
 8 conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 887, 890 (9th  
 9 Cir. 2000). Rule 59(e) provides that a district court may reconsider a prior order where the court is  
 10 presented with newly discovered evidence, an intervening change of controlling law, manifest  
 11 injustice, or where the prior order was clearly erroneous. FED. R. CIV. P. 59(e); *see also United*  
 12 *States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998); *School Dist. No. 1J, Multnomah County v.*  
 13 *AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

14 In his motion, Silsby contends that there has been an intervening change in controlling law  
 15 such that the court’s prior order is in error. *See* Doc. #21. Specifically, Silsby argues that the recent  
 16 Ninth Circuit decision in *Cervantes v. Countrywide Home Loans*, 656 F.3d 1034 (9th Cir.  
 17 September 7, 2011), establishes that a party must be a holder of both the mortgage note and deed of  
 18 trust to initiate non-judicial foreclosure proceedings. *Id.*

19 The court has reviewed the documents and pleadings on file in this matter and finds that  
 20 reconsideration of the court’s order is not warranted. Silsby’s reliance on *Cervantes* is misplaced.  
 21 First, that decision is based solely on the application of Arizona law which differs greatly from  
 22 Nevada law in terms of non-judicial foreclosures. At the time of the instant foreclosure, Nevada  
 23 law did not require the production of the original note before one of the statutorily enumerated  
 24 parties initiates a non-judicial foreclosure. *Weingarter v. Chase Home Finance, LLC*, 702 F. Supp.  
 25 2d 1276, 1280 (D. Nev. 2010). Second, the *Cervantes* court re-established the legality of statutorily  
 26

1 enumerated parties initiating non-judicial foreclosure proceedings against a defaulting party. *See*  
2 *Cervantes*, 656 F.3d at 1044. Therefore, the court finds that Silsby's motion for reconsideration is  
3 without merit and shall deny the motion accordingly.

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5 IT IS THEREFORE ORDERED that plaintiff's motion for reconsideration (Doc. #21) is  
6 DENIED.

7 IT IS SO ORDERED.

8 DATED this 17th day of May, 2012.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE